

Title	Small Claims: Request to Postpone Hearing (adopt Cal. Rules of Court, rule 1707; approve Form SC-109)
Summary	Proposed new rule 1707 and new optional Form SC-109 would require a small claims party to show good cause why the request to postpone a hearing could not be filed at least 10 days before the hearing date.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, 415-865-7669
Discussion	<p>There is a legal conundrum regarding the timing of a request to postpone a small claims hearing date. No time limit for making the request by letter or by Judicial Council form is specified in Code of Civil Procedure section 116.570.</p> <p>The Civil and Small Claims Advisory Committee conducted an informal survey of courts regarding policies on the time by which a request for a continuance must be made and whether the court had a local form for making the request. It determined that courts have different local policies on how late the request for a continuance may be filed. Many courts require that a request for a continuance be filed no later than 10 days before the hearing. However, this presents a practical problem because service of the claim must also be completed “at least 10 days before the hearing date.” (Code Civ. Proc. § 116.340(b).) A defendant served with the claim on the last day would then for all practical purposes be excluded from making a timely request for postponement. If the time for the postponement request were reduced by law to, say, 5 days, the courts would be hard pressed to process such requests. It was noted that some courts require that the proof of service be filed 3 or 5 days before the hearing. The solution appears to be to adopt a 10-day rule but to leave room for relief in cases where good cause is shown.</p> <p>Code of Civil Procedure section 116.570(b) governs procedure for requesting a postponement if the defendant is not timely served (no fee is collected by the clerk). Subdivision (d) provides for the collection of a \$10 fee for filing the request to postpone after timely service. It is likely that these provisions were originally drafted to accommodate a <i>defendant’s</i> request for postponement. However, subdivisions (b) and (d) are also being used by <i>plaintiffs</i> to request a postponed hearing date.</p>

In some courts, if the plaintiff fails to serve the defendant at least 10 days before the hearing, then the claim is dismissed and the plaintiff must refile the claim and pay another filing fee. Reasons given by plaintiffs for requesting postponement of a hearing can range from “I haven’t had time to serve” or “I haven’t gotten around to it” to “I tried but the defendant is evading service.” The latter might constitute good cause for granting the postponement. The proposed form requires that a specific reason for the request be given. The judge can deny the request if no good cause is shown. The court must balance issues of access to the court with control over its calendar. A clerk’s proof of service of the court order is also provided on the form.

The committee further recommends that the Judicial Council seek to amend Code of Civil Procedure section 116.570, incorporating proposed rule 1707, to keep small claims procedures together in the Small Claims Act. Upon the effective date of the legislative amendment, rule 1707 could be repealed. The committee also seeks comment on whether it should seek repeal of the procedure that permits a party to request postponement by letter, as authorized under Code of Civil Procedure section 116.570(a)(1), and then make the form mandatory.

The texts of the proposed rule and form, as well as relevant current statutes, follow.

Attachments

Rule 1707 of the California Rules of Court would be adopted, effective January 1, 2002, to read:

Rule 1707. Request to postpone hearing

Notice of a request to postpone the small claims hearing date must conform to Code of Civil Procedure section 116.570. The request to postpone must be filed at least 10 days before the hearing unless the requesting party gives the court good reason why the request is being filed later. The court may postpone the hearing for good cause and direct that the clerk notify all parties of the new hearing date.

<p>PARTY (Name and address):</p> <p>TELEPHONE NO. (Optional):</p> <p>E-MAIL ADDRESS (Optional):</p> <p>FAX NO. (Optional):</p>	<p>FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> <p>STREET ADDRESS:</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE:</p> <p>BRANCH NAME:</p>	<p>DRAFT-8</p>
<p>PLAINTIFF:</p> <p>DEFENDANT:</p>	
<p>REQUEST TO POSTPONE HEARING AND ORDER</p>	<p>CASE NUMBER:</p>

IMPORTANT NOTICES

1. The requesting party must mail or personally deliver a copy of this request to each of the other parties and file it with the court. *(Code of Civil Procedure section 116.570(a)(2).)*
2. If the request is not filed with the court at least **10 days** before the hearing, the requesting party must give the court a good reason why the request is being filed later. *(Explain under item 2 below.)* The court will decide if good cause was shown.
3. If the plaintiff's claim was timely served on the defendant, there is a \$10 fee for filing a request to postpone the hearing. *(Code of Civil Procedure section 116.570(d).)* Submit the fee with this request.

REQUEST

1. I am the ☐ plaintiff ☐ defendant in this case.
2. a. I request that my small claims hearing (*date*): _____ be postponed for the following reason (*be specific*):

b. ☐ This request is being made less than 10 days before the hearing for the following reason (*be specific*):
3. a. I have ☐ mailed ☐ personally delivered a copy of this request to each of the other parties in this case. (*Code of Civil Procedure section 116.570(a)(2).*)

b. ☐ I have also notified each of the other parties of this request by ☐ telephone ☐ e-mail ☐ fax.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

(Continued on reverse)

PLAINTIFF: _____	CASE NUMBER:
DEFENDANT:	

ORDER

4. ☐ The request to postpone the small claims hearing is *granted*. The hearing (*date*):
is vacated and postponed to:

Date:	Time:	Dept.:	Room:
ALL PARTIES ARE ORDERED TO APPEAR IN COURT AT THE TIME AND PLACE SHOWN ABOVE.			

5. ☐ The request to postpone the small claims hearing is *denied*. **THE CASE REMAINS SET ON THE ORIGINAL HEARING DATE. ALL PARTIES MUST BE PRESENT ON THAT DATE.**
- a. ☐ The request was not accompanied by a \$10 filing fee.
- b. ☐ The request was not filed at least 10 days before the hearing and good cause was not shown for the late request.
- c. ☐ Other (*specify*):

Date:

(JUDICIAL OFFICER)

CLERK'S CERTIFICATE OF MAILING COURT ORDER

I certify that I am not a party to this action. This *Request to Postpone Small Claims Hearing and Order* was mailed first class, postage prepaid, in a sealed envelope addressed as shown below. The mailing and this certification occurred at (*place*):

, California, on (*date*):

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date:

_____ Clerk

By _____
Deputy Clerk

— ¿CÓMO PODRÁ OBTENER AYUDA EN SU CASO? —

CONSEJEROS PARA RECLAMOS DE MENOR CUANTÍA — La ley exige que cada condado ofrezca ayuda gratis en casos de reclamos de menor cuantía. Pida al actuario (Court Clerk) que le dé el número de teléfono en su condado. (Ver 5.d.)

INTÉRPRETES — Si usted no habla inglés, puede ir a la corte en compañía de un miembro de su familia o una amistad. La corte debe mantener una lista de intérpretes que ofrecen servicios de interpretación. Algunos intérpretes cobran un precio razonable, otros no cobran. Si usted no puede encontrar un(a) intérprete para la audiencia programada, la corte deberá posponer la audiencia una sola vez para darle tiempo de obtener servicios de interpretación.

FACILIDADES — Si usted tiene algún impedimento y necesita ayuda, tenga la bondad de pedir de inmediato que la corte le ayude a satisfacer su necesidad. Si tiene dificultades para oír, informe a la corte de inmediato.

INFORMATION FOR DEFENDANT

1. **What is the small claims court?** The small claims court is a special court in which disagreements are resolved quickly and cheaply. A small claim must be for \$5,000 (*see below) or less. With some exceptions no party may file more than two small claims actions in which the amount demanded is more than \$2,500 anywhere in the state in a calendar year. The party who sues is called a **plaintiff**. The party who is sued is called a **defendant**. Neither party can be represented by a lawyer at the trial, but either party may talk to a lawyer about the case.
2. **What can you do if you are sued in the small claims court?**
 - a. **SETTLE** — You may settle your case before the trial. If you do, be sure that the plaintiff files a dismissal form with the court. If you would like help in settling your case, ask the small claims advisor (see No. 5, below) to refer you to an alternative dispute resolution provider.
 - b. **DEFAULT** — If you do not go to the trial, it is called a **default**. The plaintiff may win the amount of the claim and costs. The plaintiff may then be able to use legal procedures to take your money or property to pay the judgment.
 - c. **APPEAR AND CONTEST** — You may go to the trial and disagree with the plaintiff's claim. If you do, bring all witnesses, books, receipts, and other papers or things to prove your case. You may ask the witnesses in your case to go to the trial or, before the trial, you may ask the clerk of the court to issue a **subpoena**. A subpoena is a court order that requires the witness to go to the trial.
 - d. **APPEAR AND REQUEST PAYMENTS** — You may agree with the plaintiff's claim, but you may be unable to pay the money all at once. You may then choose to go to the trial and ask the court to order payments you can afford.
 - e. **POSTPONE** — If you live in the county where the claim was filed, you must be served with a copy of the claim *10 days before the trial*. If you live outside the county, you must be served *15 days before the trial*. If you did not receive the claim within these time limits, you may ask the court for a postponement. (No fee charged.)

If you cannot attend the hearing on the date scheduled, write to the court before the hearing date and tell why, and ask the court to postpone the hearing. (Fee charged.)
 - f. **CHALLENGE VENUE** — If you believe the plaintiff's claim was filed in the wrong court (see Venue Table, below), write to the court before the hearing date, explain why you think so, and ask the court to dismiss the claim. Mail a copy to the plaintiff and file a proof of mailing with the court. For information about proof of mailing, see the small claims advisor.
3. **What can you do if you also have a claim against the person who sued you?** A claim against the person who sued you is called a *Defendant's Claim* (form SC-120). Ask the clerk for this form to file your claim. The claim must not be for more than \$5,000.* If you received your copy of the plaintiff's claim *less than 10 days* before the trial date, you must have the plaintiff served with your claim *at least 1 day* before the trial date. If you received your claim *more than 10 days* before the trial date, you must have the plaintiff served with your claim *at least 5 days* before the trial date. The court will hear both claims at the same time.
4. **What happens after trial?** The court will deliver or mail to you a copy of a form called the *Notice of Entry of Judgment* (form SC-130). *This form tells you how the case was decided. If you disagree with the court's decision, you may appeal the judgment on the plaintiff's claim. You may not appeal your own claim. If you appeared at the trial, you must begin your appeal by filing a Notice of Appeal* (form SC-140) and pay the required fees within *30 days* after the date the *Notice of Entry of Judgment* was mailed or handed to you. If you did not appear at the trial, you must first ask the court to vacate or cancel the judgment. To make this request, you must file a *Motion to Vacate the Judgment* (form SC-135) and pay the required fees within *30 days* after the date the *Notice of Entry of Judgment* was mailed or handed to you. *If your request is denied, you then have 10 days* from the date the notice of denial was mailed or handed to you to file an appeal.
5. **How can you get help with your case?**
 - a. **MINORS** — If you are under 18 years old, you should tell the clerk. You are too young to act for yourself in the case. You must ask the court to appoint someone to act for you. That person is called a **guardian ad litem**.
 - b. **INTERPRETERS** — If you do not speak English, you may take a family member or friend to court with you. The court should keep a list of interpreters who will interpret for you. Some interpreters charge a reasonable or no fee. If an interpreter is not available, the court must postpone the hearing one time only so that you have time to get one.
 - c. **ACCOMMODATIONS** — If you have a disability and need assistance, please ask the court immediately to help accommodate your needs. If you are hearing impaired and need assistance, please notify the court immediately.
 - d. **SMALL CLAIMS ADVISORS** — The law requires each county to provide assistance in small claims cases free of charge. (*Small claims advisor information*):

VENUE TABLE

The plaintiff must file the claim in the proper court and geographical area. This rule is called **venue**. Below are possible reasons for filing the claim in this court. *If you are the plaintiff, insert the proper letter from the list below in item 4 on the other side of this sheet and specify additional facts for D, E, or F. This court is the proper court for the trial of this case because*

- | | |
|--|--|
| A. a defendant lives in this judicial district or a defendant corporation or unincorporated association has its principal place of business in this judicial district. | corporation, the contract was breached in this judicial district. |
| B. a person was injured or personal property was damaged in this judicial district. | D. the claim is on a retail installment account or contract subject to Civil Code section 1812.10. (<i>Specify facts on the other side of this sheet.</i>) |
| C. a defendant signed or entered into a contract in this judicial district, a defendant lived in this judicial district when the contract was entered into, a contract or obligation was to be performed in this judicial district, or, if the defendant was a | E. the claim is on a vehicle finance sale subject to Civil Code section 2984.4. (<i>Specify facts on the other side of this sheet.</i>) |
| | F. other. (<i>Specify facts on the other side of this sheet.</i>) |

* The \$5,000 limit does not apply, and a \$4,000 limit applies, if a "defendant guarantor . . . is required to respond based upon the default, actions, or omissions of another" (\$2,500 if the defendant guarantor does not charge a fee for the service).

CODE OF CIVIL PROCEDURE

§ 116.570. Postponement of hearing

(a) Any party may submit a written request for postponement of a hearing date.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

(3) (A) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(B) On one occasion, upon the written request of a defendant guarantor, the court shall postpone the hearing for at least 30 days, and the court shall take this action without a hearing. Nothing in this subparagraph, however, shall limit the discretion of the court to grant additional postponements under subparagraph (A).

(4) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b) If service of the claim and order upon the defendant is not completed within the number of days before the hearing date required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the court shall postpone the hearing for at least 15 days. If a postponement is ordered under this subdivision, the clerk shall promptly notify all parties by mail of the new hearing date, time, and place.

(c) Nothing in this section limits the inherent power of the court to order postponements of hearings in appropriate circumstances.

(d) A fee of ten dollars (\$10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after timely service pursuant to subdivision (b) of Section 116.340 has been made upon the defendant.

§ 116.340. Service of claim and order on defendant

(a) Service of the claim and order on the defendant may be made by any one of the following methods:

(1) The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt.

(2) The plaintiff may cause a copy of the claim and order to be delivered to the defendant in person.

(3) The plaintiff may cause service of a copy of the claim and order to be made by substituted service as provided in subdivision (a) or (b) of Section 415.20 without the need to attempt personal service on the defendant. For these purposes, substituted service as provided in subdivision (b) of Section 415.20 may be made at the office of the sheriff or marshal who shall deliver a copy of the claim and order to any person authorized by the defendant to receive service, as provided in Section 416.90, who is at least 18 years of age, and thereafter mailing a copy of the claim and order to the defendant's usual mailing address.

(4) The clerk may cause a copy of the claim to be mailed, the order to be issued, and a copy of the order to be mailed as provided in subdivision (b) of Section 116.330.

(b) Service of the claim and order on the defendant shall be completed at least 10 days before the hearing date if the defendant resides within the county in which the action is filed, or at least 15 days before the hearing date if the defendant resides outside the county in which the action is filed.

(c) Service by the methods described in subdivision (a) shall be deemed complete on the date that the defendant signs the mail return receipt, on the date of the personal service, as provided in Section 415.20, or as established by other competent evidence, whichever applies to the method of service used.

(d) Service shall be made within this state, except as provided in subdivisions (e) and (f).

(e) The owner of record of real property in California who resides in another state and who has no lawfully designated agent in California for service of process may be served by any of the methods described in this section if the claim relates to that property.

(f) A nonresident owner or operator of a motor vehicle involved in an accident within this state may be served pursuant to the provisions on constructive service in Sections 17450 to 17461, inclusive, of the Vehicle Code without regard to whether the defendant was a nonresident at the time of the accident or when the claim was filed. Service shall be made by serving both the Director of the California Department of Motor Vehicles and the defendant, and may be made by any of the methods authorized by this chapter or by registered mail as authorized by Section 17454 or 17455 of the Vehicle Code.

(g) If an action is filed against a principal and his or her guaranty or surety pursuant to a guarantor or suretyship agreement, a reasonable attempt shall be made to complete service on the principal. If service is not completed on the principal, the action shall be transferred to the court of appropriate jurisdiction.